

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Facilitating the Provision of Spectrum-Based)	
Services to Rural Areas and Promoting)	WT Docket No. 02-381
Opportunities for Rural Telephone)	
Companies To Provide Spectrum-Based)	
Services)	
)	
2000 Biennial Regulatory Review)	WT Docket No. 01-14
Spectrum Aggregation Limits)	
For Commercial Mobile Radio Services)	
)	
Increasing Flexibility To Promote Access to)	WT Docket No. 03-202
and the Efficient and Intensive Use of)	
Spectrum and the Widespread Deployment of)	
Wireless Services, and To Facilitate Capital)	
Formation)	

To: The Commission

**PETITION FOR PARTIAL RECONSIDERATION AND/OR CLARIFICATION
OF AIRWAVE WIRELESS, LLC AND GW WIRELESS, INC.**

Airwave Wireless, LLC (“Airwave”) and GW Wireless, Inc. (“GWW”) (collectively, the “South Dakota Wireless Coalition” or the “Coalition”), by their attorneys and pursuant to Section 1.429 of the Commission’s Rules, hereby request partial reconsideration and/or clarification of the *Report and Order* in the above-captioned proceeding.¹

In general, the Coalition and its members support the new policies and rules adopted in the *Rural Spectrum Order* and applaud the Commission’s efforts to promote

¹ Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services, *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 02-381, FCC 04-166 (2004) (“*Rural Spectrum Order*”) [published in Federal Register on December 15, 2004 at 69 FR 75144].

the availability of wireless services in rural areas. However, requiring broadband PCS licensees in some of the most sparsely populated rural areas in the country to demonstrate substantial service within five years of license grant – rather than providing these licensees with the more meaningful alternative of providing substantial service within ten years (*i.e.*, coincident with the first renewal deadline) – represents a significant and unexplained departure from the wording of the proposed rule. In addition, a related substantial service requirement should be applied across the board to all PCS licensees, to achieve the harmonization of regulatory requirements suggested by the record in this proceeding. The revised broadband PCS buildout rule adopted in the *Rural Spectrum Order* does not provide rural licensees such as Airwave and GWW with adequate flexibility to construct wireless facilities and to initiate the provision of service when and where it makes economic sense to do so. Moreover, the timing of the Commission’s *Rural Spectrum Order*, which was adopted on July 8, 2004 (just days after the five-year construction deadline for many broadband PCS licenses that were granted following FCC Auction No. 22) makes it uncertain whether the substantial service buildout option will be available to the rural PCS licensees that had five-year construction deadlines of June 30, 2004.

Therefore, to ensure that the important rule modifications adopted by the Commission are to have their intended effect for rural PCS licensees, the Commission should clarify that a “substantial service” option will be available for PCS licenses that were granted following FCC Auction No. 22 and that all rural licensees (regardless of channel block) may elect to make their substantial service showing on or before their first renewal deadline. Such regulatory flexibility is appropriate because it recognizes the

economic challenges faced by carriers that have chosen to serve rural areas (as defined in the *Rural Spectrum Order*) and because the relief is tailored to fit a readily identifiable class of businesses that have risen to accept those challenges.

STATEMENT OF INTEREST

Airwave is an eligible small business consortium consisting of seven South Dakota rural telephone companies, rural telephone cooperatives and/or rural telco subsidiaries. The members of Airwave include Hanson Communications, Inc. (“Hanson”), Interstate Satellite Services, Inc. (“Interstate”), Midstate Communications, Inc. (“Midstate”), James Valley Wireless, Inc. (“James Valley”), Santel Communications Cooperative, Inc. (“Santel”), Valley Communications, Inc. (“Valley Communications”), and Venture Communications, Inc. (“Venture”). GWW is a wholly-owned subsidiary of Golden West Telecommunications Cooperative, Inc. (“Golden West”), a rural telephone cooperative based in Wall, South Dakota. These South Dakota companies were among twenty-four rural carriers that participated in initial comments and reply comments filed in this proceeding filed by the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast.² Because Airwave and GWW both hold broadband PCS licenses for some of the most sparsely populated rural markets in the United States (*i.e.*, having an average population density of less than 10 persons per square mile) and because its licenses had a five-year buildout deadline of June 30, 2004, each has a significant interest in the outcome of this proceeding.

² See, e.g., Comments of the Blooston Rural Carriers in WT Docket No. 03-202, (*filed* Dec. 29, 2003); Reply Comments of the Blooston Rural Carriers in WT Docket No. 03-202, (*filed* Jan. 26, 2004). The twenty-four rural carriers that participated in these comments include Allcom Communications, Inc.; Alliance Communications Cooperative, Inc.; Arvig Communications Systems; CC Communications; Golden West Telecommunications Cooperative, Inc.; Interstate Telecommunications Cooperative, Inc.;

ISSUES FOR RECONSIDERATION AND/OR CLARIFICATION

I. The Substantial Service Construction Option Adopted in Rule Section 24.203(a) is an Unexplained Departure from the NPRM Proposal and Will Not Provide Adequate Relief to Certain PCS Licensees in the Most Remote Portions of the United States.

In the Rural Spectrum Access *Notice of Proposed Rulemaking*, the FCC proposed to add the following language to Rule Section 24.203, in order to provide all broadband PCS licensees with a “substantial service” buildout option:

"Alternatively, licensees may provide 'substantial service' to their licensed area *within ten years*."

Notice of Proposed Rulemaking, WT Docket No. 02-381, FCC 03-222, Appendix B page 1 (*Emphasis added*) (“*Rural NPRM*”). The plain wording of this proposed change is unambiguous and it would give broadband PCS licensees until the tenth anniversary of their license grant to implement some form of substantial service and to file a build out showing. However, the rule ultimately adopted by the Commission includes a simple but important change. The relevant portion of Rule Section 24.203(a) now reads:

“Licensees may, in the alternative, provide substantial service to their licensed area *within the appropriate five- and ten-year benchmarks*.”
(Emphasis added)

James Valley Telecommunications; Kennebec Telephone Company; McCook Cooperative Telephone Company; Midstate Communications, Inc.; Midvale Telephone Exchange, Inc.; Montana Wireless, Inc.; North Dakota Network Company; Park Region Mutual Telephone Company; Polar Communications Mutual Aid Corporation; PVT Networks, Inc.; Rothsay Telephone Company; Santel Communications Cooperative; South Slope Cooperative Telephone Co., Inc.; 3 Rivers Telephone Cooperative, Inc.; Valley Telecommunications Cooperative Association, Inc.; Venture Communications, Inc.; Webster Calhoun Cooperative Telephone Association; West River Cooperative Telephone Company.

The *Rural Spectrum Order* provides no explanation for this departure from the Commission’s original proposal. Instead, it merely announces that “[I]n large part, we adopt the proposal, as set forth in the *Rural NPRM*, to extend the substantial service construction benchmark to all wireless services that are licensed on a geographic area basis. Specifically, we amend our regulations to provide a substantial service construction benchmark for the following licensees: 30 MHz broadband PCS licensees; . . .”³ While the phrase “in large part” indicates that something was being changed, the text of the order only discusses the FCC’s decision to not extend the new rule to MDS, or to adopt a similar rule for cellular. There is no discussion of why “substantial service within ten years” was changed to “substantial service within the appropriate five- and ten-year benchmarks.”

As noted above, members of the South Dakota Wireless Coalition supported the Commission’s proposed rule modification in joint comments and reply comments. The comments indicated that the five-year construction deadline was fast approaching for many rural PCS licensees, and that it would be appropriate in this context for the Commission to issue an interim order “as soon as possible” so that rural PCS licensees would have a meaningful opportunity to benefit from the Commission’s revised policies and rules (*i.e.*, so that rural carriers would have an additional five years to secure funding and to develop a business plan rather than seeing their licenses cancelled at the five year mark because the proposed relief was untimely).⁴ CTIA also supported the proposed rule modification, noting its belief that the addition of this alternative construction

³ *Rural Spectrum Order* at ¶ 75.

⁴ See Comments of the Blooston Law Firm at p. 16; Reply Comments of the Blooston Law Firm at p. 7.

requirement “will provide carriers in rural areas with greater incentive and ability to raise necessary capital and to construct facilities and provide services that are situated to the needs of the rural area.”⁵ Allowing rural PCS licensees the alternative of demonstrating substantial service at license renewal will allow carriers to focus on the challenges of serving sparsely populated areas when it becomes economically feasible to do so, rather than forcing them to use their limited resources to duplicate existing carriers’ coverage. In keeping with its goal of flexibility for licensees, the Commission has also adopted substantial service at license renewal as the buildout standard for a wide variety of wireless services, including 1.7 and 2.1 GHz AWS, 2.3 GHz WCS and the lower 700 MHz band service in Part 27,⁶ and the LMDS, 39GHz and 24 GHz microwave services in Part 101.⁷ Applying the ten-year substantial service option to PCS would comport with the statutory requirement of regulatory parity, and the Commission’s goal of giving rural licensees greater flexibility.

In this regard, the “substantial service at renewal” standard should be applied to all PCS bands. The effort required to construct a 10 MHz PCS system is substantially the same as the effort to construct a 30 MHz PCS system. If a 10 MHz licensee wishes to achieve the same coverage, it will need to purchase the same number of transmitters, towers, antennas, E911 solution, CALEA capability, and related network elements as a 30 MHz licensee. Indeed, regardless of whether a license holder has a 10 MHz or a 30 MHz PCS license (or anything in between), most rural service providers satisfy their buildout using far less than 10 MHz of their licensed spectrum, and add spectrum as

⁵ Comments of CTIA at p. 5.

⁶ See 47 C.F.R. §§ 27.14 (a).

demand warrants. The record in this proceeding shows support for a broad, “across-the-board” application of this substantial service requirement. For example NRTC has urged the Commission “to adopt a broad substantial service test for all wireless licensees,” indicating that this will provide them with a greater incentive to serve rural areas.⁸ Airwave and GWW respectfully submit that providing all licensees – including holders of 10 MHz D-, E- and F-Block PCS licenses – with the flexibility to demonstrate substantial service within ten years (*i.e.*, at the end of their initial license term) is in the public interest.

II. The Commission Should Clarify that the Ten Year Substantial Service Alternative will be Available to All Broadband PCS Licenses Granted Following Auction No. 22.

The Commission adopted its decision to extend the “substantial service” option to 30 MHz broadband PCS licensees on July 8, 2004. As previously stated, this came a little more than a week after the five-year construction deadline for some 159 Auction No. 22 licenses that were granted on June 30, 1999.⁹ However, the decision was adopted and announced before the five-year construction deadline for those Auction No. 22 licenses that were granted on July 22, 1999 (36 licenses),¹⁰ on September 29, 1999 (81 licenses),¹¹ on October 7, 1999 (2 licenses)¹² and on October 28, 1999 (24 licenses).¹³

⁷ See 47 CFR §§101.17, 101.527, 101.1011.

⁸ See Comments of National Rural Telecommunications Cooperative (“NRTC”) at 5.

⁹ FCC *Public Notice* DA 99-1228 announced the Wireless Bureau’s grant of 159 C, E & F Block broadband PCS licenses. See Report No. CWD-22-C (*rel.* June 30, 1999).

¹⁰ FCC *Public Notice* DA 99-1450 announced the Wireless Bureau’s grant of 36 C Block broadband PCS licenses. See Report No. CWD-22-D (*rel.* July 23, 1999).

¹¹ FCC *Public Notice* DA 99-2008 announced the Wireless Bureau’s grant of 81 C, E & F Block broadband PCS licenses. See Report No. CWD-22-F (*rel.* September 29, 1999).

¹² FCC *Public Notice* DA 99-2107 announced the Wireless Bureau’s grant of 2 C Block broadband PCS licenses. See Report No. CWD-22-H (*rel.* October 7, 1999).

Therefore, in the absence of clarification by the FCC, there is unnecessary confusion over whether the “substantial service” buildout option is available to all Auction No. 22 licensees, as opposed to only those 143 licenses that were granted after July 8, 1999 (*i.e.*, five years prior to the Commission’s adoption of the revised rule).

Given the Commission’s rationale for revising the rule (*i.e.*, to increase licensees’ flexibility to develop rural-focused business plans and to allow all licensees, including small entities, to deploy spectrum-based services in more sparsely populated areas without being bound to concrete population or geographic coverage requirements) there is no logical reason to allow one group of PCS licensees to benefit from the increased regulatory flexibility while denying such flexibility to licenses. Indeed, in the interest of regulatory parity, the Coalition and its members submit that the remedial purpose of the revised rule will be served best if the Commission clarifies that the substantial service alternative will be available to all broadband PCS licenses that were granted following FCC Auction No. 22.

¹³ FCC *Public Notice* DA 99-2352 announced the Wireless Bureau’s grant of 24 C Block broadband PCS licenses. *See* Report No. CWD-22-I (*rel.* October 28, 1999).

CONCLUSION

The South Dakota Wireless Coalition applauds the Commission for adopting policies and rules intended to increase the ability of rural wireless service providers to use the licensed spectrum resources flexibly and efficiently to offer a variety of services in a cost-effective manner. The Coalition and its members respectfully request that the Commission reconsider its *Rural Spectrum Order* or otherwise clarify that a “substantial service” option will be available for PCS licenses that were granted following FCC Auction No. 22 and that all rural licensees (regardless of channel block) may elect to make their substantial service showing on or before their first renewal deadline

Respectfully Submitted,

THE SOUTH DAKOTA WIRELESS COALITION

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Dated: January 14, 2005